IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATIONS NOS.8885/2002,
,8886/2002,8887/2002,8888/2002.8889/2002,8890/2002,
8140/2002 & 8144/2002.

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKBHAI MANILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 8885 of 2002
MR KS JHAVERI for Petitioner No. 1-21
PUBLIC PROSECUTOR for Respondent No. 1
RULE SERVED for Respondent No. 2

2. Criminal Misc.Application No. 8886 of 2002
MR KS JHAVERI for Petitioner No. 1
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/05/2003

ORAL JUDGEMENT

1. All these petitions invoking Article 226 of the Constitution and Section 482 of the Criminal Procedure Code by the same set of twenty one petitioners are filed with a prayer to quash eight criminal proceedings pending against them in eight different courts of the learned J.M.F.C. The original complaints in the aforesaid criminal cases are filed by different Food Inspectors alleging offence punishable under Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954(for short "the Act"). The dates of alleged offence i.e. the dates of taking samples for analysis under the Act are spread between 9-1-1998 to 28-1-1998 and after sanction for prosecution in August 2002 the complaints have been filed in September/October 2002. The petitioners, their counsel and legal issues being the same in all these petitions they were argued together and are disposed by this common judgment.

2. The petitioners were sitting or former Directors of Gujarat State Co-operative Marketing Federation Limited, a specified society registered under the Gujarat Cooperative Societies Act, 1961 and which is itself an accused in the original complaints. It is stated in the complaints that complainant Food Inspector had purchased the samples of groundnut oil from the stock held by Gujarat Civil Supplies Corporation Limited which is also an accused and after analysis of the sample it was found to be adulterated and thus, the offence punishable under Section 16 of the Act was alleged to have been committed. The Food Inspector is stated to have applied in May, June or August, 1998 for sanctioning the prosecution and after obtaining the same in August 2002, the complaints were filed in the next two months.

2.1 It is contended on behalf of the petitioners that though the analysis report was received in February, 1998, the complaints came to be filed after more than four and a half years without assigning any reasons for the delay and the Federation of which the petitioners were alleged to be Directors was called upon to send their sample for independent analysis only in October, 2002. It is also averred and argued that original sanction for prosecution was sought for filing complaint against seven accused parties only but the Assistant

Commissioner and Local (Health) Authority had after more than four years granted the sanction to prosecute twenty nine to thirty one parties. It is also alleged that no preservatives were added at the time of taking samples of the groundnut oil which was a perishable item. It is also averred and argued that the petitioners, as Directors, were not in charge of the manufacturing plant where the groundnut oil was produced and that they were not otherwise involved in the commission of the offence. It was also alleged that different proceedings were initiated against the petitioners in different Courts at different places with a view to harassing them, even as no allegation whatsoever was made in the complaint against the petitioners. It was also submitted that Federation of which the petitioners were alleged to be Directors had filed the nomination in form VIII in accordance with Rule 12B of Rules made under the Act, and therefore, the complaints against the present petitioners were liable to be quashed. It appears that the person alleged to be nominated under the provisions of sub-section (2) of Section 17 of the Act, namely, Shri Ashwinbhai D.Shah, Assistant Manager, Legal is not joined as an accused person in any of the complaints.

3. Taking the last contention first, it was seen that the nomination of Shri Ashwinbhai D.Shah was not in the prescribed form and the important words in the prescribed form i.e. "and responsible to the said Company for the conduct of the business of the said Company or establishment/branch/unit thereof" and " or expedient to prevent the commission by the said Company of any offence under the Prevention of Food Adulteration Act,1954" were missing in the nomination, and hence, the contention based on the nomination has to be turned down. As for the delay in filing of the complaint and sanction for prosecution of more persons than the ones for whom application was made, it was submitted by the learned A.P.P. Mr. Gohil that longer time had elapsed due to correspondence and non supply of details of Directors and that did not vitiate the prosecution. It was also submitted by the learned A.P.P. that the third sample could still be analyzed and could not by itself be a ground for quashing the complaint particularly when the accused parties other than the petitioners had not even made an application or grievance about the same. The allegation of mala fides and motives of harassment were denied in toto.

4. Thus, the cases of the petitioners were argued by the learned Counsel Mr. K.S.Jhaveri mainly on the grounds that the complaint did not even allege that the

offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the petitioners and prima facie the petitioners, as Directors, nominated on the Board of Directors of the Federation by respective Cooperative Societies were in no way in charge of and responsible to the Federation for the conduct of its business. The learned Counsel relied upon the judgment of the Supreme Court in Smt.Manibhai and another, v. The State of Maharashtra (AIR 1974 S C 434). In the facts of that case, the appellant was, on evidence, found to be not in charge of the business carried on at the shop from which the Food Inspector had purchased the coconut oil. The judgment of the Supreme Court in State of Haryana v.Brijlal Mittal and others. ((1998) 5 SCC 343), was also relied upon for the proposition that simply because a person is a Director of the Company it does not necessarily mean that he fulfils both the requirements of being in charge of and also responsible to the Company so as to make him liable. In the facts of that case, except a bald statement in the complaint that the respondents were Directors of the manufacturers, there was no other allegation to indicate, even prima facie, that they were in charge of the Company and also responsible to the Company for the conduct of its business. Therefore, the complaint was held to be liable to be quashed. Although that case was covered by Section 34 of the Drugs and Cosmetics Act, 1940, the Supreme Courts relied upon its earlier judgment in Municipal Corporation of Delhi v. Ram Kishan Rohtagi, ((1983) 1 SCC 1), and quoted the following paragraph therefrom:

"15. So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors(accused 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

5. It must be noted that in Municipal Corporation of Delhi v. Ram Kishan Rohtagi (Supra), the provision in question was Section 17 of the Act as it stood at the time of the offence and the Section appears to have been substituted by Act 34 of 1976.

5.1 The substituted Section 17 of the Act is analyzed and interpreted by the Supreme Court in R. Banerjee and others v. H.D.Dubey and others (1992 CRI.L.J. 1523), wherein it is held that notwithstanding the nomination under sub-section 2 of Section 17 and notwithstanding Cl. (a)(i) of sub-section (1) of Section 17, any Director, Manager, Secretary or other officer of the company, other than the nominated person, can be proceeded against and punished if it is shown that the offence was committed with his consent or connivance or negligence. However, it is also held that in view of the nomination made as required by sub-section (2) of Section 17 of the Act, only the nominated person could be proceeded against and punished since there was no allegation in the complaints lodged by the Food Inspector to being the case within sub-section (4) of Section 17 of the Act. It is also held that it would then be necessary for the prosecuting agency to show from the averments made in the complaint that the case falls within sub-section (4) of Section 17 of the Act. If the prosecuting agency fails to show that the offence was committed with the consent or connivance of any particular Director, Manager, Secretary or other officer of the company or on account of the negligence of any one or more of them, the case set up against the appellants cannot be allowed to proceed. In the facts of that case, there was no allegation in the complaint which would bring the case within the scope of Section 17(4) of the Act. There was no allegation in the complaint that the offence was committed with the consent/ connivance/negligence of the Directors other than the nominated persons who were impleaded as co-accused. However, it was ordered in that case, that if upon inquiry, it was found that nomination was not valid, the learned Magistrate would proceed against all the persons who were shown as the accused in the complaint i.e. all the Directors including the nominated persons and the Company.

6. In the facts of the present case also, the complaints do not contain any allegation whatsoever against the petitioners, and they appear to have been implicated and joined as the accused persons only by adding their names in the cause title. Therefore, although the nomination prima facie appear to be invalid,

the petitioners joined as Directors of the Federation , in absence of even an allegation of consent, connivance or negligence leading to the commission of the alleged offence, could not be proceeded against. Therefore, the complaints and the criminal cases against them are liable to be quashed at this stage. It was, however, contended by the learned A.P.P. that the lacuna in the drafting of the complaint was not fatal to the prosecution and in any case, the Company i.e. the Federation being an accused, the trial Court could proceed against any person under Section 319 of the Criminal Procedure Code. He, therefore, requested that the option to implicate and proceed against any of the petitioners should be left open. The learned Counsel for the petitioners having expressed no objection to that proposition, these petitions are disposed accordingly.

7. In the facts and for the reasons recorded hereinabove, the petitions are allowed at this stage and the Criminal Case no.1286/2002 pending in the Court of learned J.M.F.C., Mahuva, Criminal Case no.5791/2002 pending in the Court of learned C.J.M., Bhavnagar, Criminal Case no.187/2002 pending in the J.M.F.C., Valbhipur, Criminal Case no.1190/2002 pending in the Court of learned J.M.F.C., Palitana, Criminal Case no.1460/2002 pending in the Court of learned J.M.F.C., Talaja, Criminal Case no.1189/2002 pending in the Court of learned J.M.F.C., Palitana, Criminal Case no.907/2002 pending in the Court of learned J.M.F.C., Botad and Criminal Case no.16/2002 pending in the Court of learned Ch.J.M., Nadiad are quashed as against the petitioners only with liberty to the trial Court to exercise its powers under Section 319 of the Criminal Procedure Code. Rule is made absolute accordingly with no orders as to costs.

(D.H.Waghela,J.)

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